

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-003-13-1-5-00157-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-481-012.000-003
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 assessment of his property located at 4713 W. 28th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a determination valuing the vacant lot at \$1,400.
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On August 20, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Joseph E. James and Robert Metz, his Hearing Officers. They were all sworn as witnesses.

RECORD

1. The official record contains the following:
 - Petitioner’s Exhibit 1: Property Record Card for 2010-2013
 - Petitioner’s Exhibit 2: Property Record Card for 2015-2018
 - Petitioner’s Exhibit 3: Aerial map
2. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.¹

¹ The Assessor offered no exhibits.

BURDEN OF PROOF

3. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
4. Here, the property's assessment decreased from 2012 to 2013. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

5. Nowacki's case:
 - a. Nowacki acquired the property at an auction attended by hundreds of willing and able bidders for the minimum bid of \$100. None of the bidders had an interest in this property because of the high assessment. The property has churned through the tax sale system for fifty years because it is over-assessed. *Nowacki testimony.*
 - b. Nowacki claims that when the State reduced the taxes for U. S. Steel the Assessor raised the assessments on all other properties resulting in a higher tax burden. That burden caused many people to abandon their properties and threw the city into a tax crisis. Property valuations need to be at a level where people can purchase properties, hold properties, and feel they are getting a value for paying taxes based on the assessments. This would alleviate the blight, the lack of investment, and the declining tax collections. *Nowacki testimony.*
 - c. The Assessor's records show this property has been over-assessed. Its assessed value has gone from \$3,600 in 2011 down to \$1,200 in 2016 or by more than two-thirds of its value in five years. Nowacki contends a fair market value for this property is \$500, and that correcting its valuation will help stop the conspiracy to defraud and drive the city into destruction. *Nowacki testimony; Pet'r Exs. 1, 2.*
6. The Assessor's case:
 - a. The Assessor contends that Nowacki provided no market evidence to support his requested valuation for 2013, and he recommends no change to the assessment. *James testimony.*

ANALYSIS

7. Nowacki failed to make a prima facie case for reducing the property's 2013 assessment. The Board reached this decision for the following reasons:

- a. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1- 31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013, the valuation date was March 1, 2013. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the property’s 2013 assessment should be \$500, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. We also give no weight to his claims regarding the property’s decreasing assessment. The Assessor’s decision to decrease the property’s assessment between 2011 and 2016 does not prove that its 2013 assessment was incorrect. As the Tax Court has explained, “each tax year—and each appeal process—stands alone.” *Fisher v. Carroll Cnty. Ass’r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. *See, e.g., Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998).
- e. To the extent Nowacki was asserting that his purchase price of \$100 reflects the property’s correct value, we disagree. The purchase price of a property can be the best evidence of a property’s value. *Hubler Realty Co. v. Hendricks Co. Ass’r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, however, Nowacki failed to prove that the sale met the requirements of an open-market, arm’s-length transaction. Nor did

he attempt to relate the purchase price to the valuation date. Consequently, the purchase price is not probative evidence of the property's market value-in-use.

- f. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2013 assessment.

ISSUED: November 13, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.